

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Richard P., by and for **R.P.**, and Denise L.,)
by and for **K.L.**,)

Plaintiffs)

v.)

SCHOOL DISTRICT OF THE CITY)
OF ERIE, PENNSYLVANIA; JANET)
WOODS, Individually and in her Capacity)
as Principal of Strong Vincent High)
School; and **LINDA L. CAPPABIANCA**,)
Individually and in her Capacity as)
Assistant Principal of Strong Vincent High)
School,)

Defendants)

Civil Action No. 03-390 Erie

JURY TRIAL DEMANDED

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO AMEND COMPLAINT

Defendants The School District of the City of Erie, Pennsylvania and Linda L. Cappabianca respectfully submit Defendants' Response to Plaintiffs' Motion to Amend Complaint.

1. The subject of this response is Plaintiffs' Motion to Amend Complaint, filed by plaintiffs on October 13, 2005, to which is attached a proposed Second Amended Complaint.
2. The Preliminary Statement of the proposed Second Amended Complaint contains changes to the Amended Complaint, and a Count IV is added to the Amended Complaint, asserting claims under Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act") and the Individuals with Disabilities Education Act ("IDEA").
3. Plaintiffs assert in Court IV that the placement process with respect to plaintiffs' placement at Sarah Reed Children's Home in January 2002 was in violation of the Rehabilitation

Act and IDEA and that the services provided to plaintiffs at Sarah Reed amounted to a denial of FAPE.

4. Count IV of the proposed Second Amended Complaint admits that plaintiffs have not pursued administrative remedies under IDEA and the record filed in support of Defendants' Amended Motion for Partial Summary Judgment also indicates that those administrative remedies were not pursued.

5. Defendants contend that Plaintiffs' Motion to Amend Complaint should be denied because plaintiffs have failed to exhaust the administrative remedies afforded by IDEA.

WHEREFORE, defendants The School District of the City of Erie, Pennsylvania and Linda L. Cappabianca respectfully request that the Court deny Plaintiffs' Motion to Amend Complaint.

Respectfully submitted,

/s/ James T. Marnen

James T. Marnen
PA I.D. No. 15858
KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.
120 West 10th Street
Erie, PA 16501
General Tel: 814-459-2800
Direct Dial Tel: 814-459-9886, ext. 203
Fax: 814-453-4530
E-mail: jmarnen@kmgslaw.com

Attorney for Defendants,
The School District of the City of Erie,
Pennsylvania and Linda L. Cappabianca

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Denise L., by and for **KRISTINA L.**,)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2d day of November, 2005, a copy of the within document was served on all counsel of record and unrepresented parties in accordance with the applicable rules of court.

/s/ James T. Marnen

James T. Marnen